

Study FHL-910

June 8, 2000

**First Supplement to Memorandum 2000-41****Effect of Dissolution of Marriage on Nonprobate Transfers  
(Comments of Robert E. Temmerman, Jr.)**

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On May 9, 2000, the Commission received a copy of a letter from Robert E. Temmerman, Jr. to James B. Ellis, chair of the Estate Planning, Trust and Probate Law Section of the State Bar ("Executive Committee"). In his letter, which is attached, Mr. Temmerman urges the Executive Committee to sponsor legislation in January 2001 to implement the Commission's recommendation on the *Effect of Dissolution of Marriage on Nonprobate Transfers*. As he notes:

It is my opinion that existing law should be changed to provide that dissolution of marriage automatically revokes dispositions to a former spouse of nonprobate transfers such as life insurance, revocable trust asset, and joint tenancies. I have been involved in no less than five cases where the deceased client failed to change a life insurance beneficiary from a former spouse, modify his or her trust which benefited a former spouse, or terminate joint tenancy titles with a former spouse. In all cases, litigation developed between the former spouse and the decedent's estate, heirs, or trust.

If the State Bar were to sponsor legislation implementing the Commission's recommendation, the Commission staff would provide legislative committees with the same types of information and assistance regarding the bill that it would with any other bill implementing a Commission recommendation.

In deciding how to proceed with this recommendation, the Commission should keep in mind the possibility that the State Bar may honor Mr. Temmerman's request that it sponsor implementing legislation.

Respectfully submitted,

Brian Hebert  
Staff Counsel

**ESTATE PLANNING, TRUST AND  
PROBATE LAW SECTION  
THE STATE BAR OF CALIFORNIA**

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May 8, 2000

File: \_\_\_\_\_

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Re: CLRC Memorandum 2000-41  
Effect of Dissolution of Marriage on Non Probate Transfers

Dear Jim:

I subscribe to the California Law Revisions Commission studies in an attempt to follow the CLRC activities in the estate planning and administration arena. I have done this since I was a member of Team 2 back in the early 1990's.

Recently, the Commission issued Memorandum 2000-41, a copy of which is enclosed. This Memo recommends that, due to political prospects, the Commission delay introducing legislation on the effect of divorce on non-probate transfers in the next legislative session.

It is my opinion that existing law should be changed to provide that dissolution of marriage automatically revokes dispositions to a former spouse of non probate transfers such as life insurance, revocable trust asset, and joint tenancies. I have been involved in no less than five cases where the deceased client failed to change a life insurance beneficiary from a former spouse, modify his or her trust which benefitted a former spouse, or terminate joint tenancy titles with a former spouse. In all cases, litigation developed between the former spouse and the decedent's estate, heirs, or trust.

Existing legislation provides that provisions in a will benefitting a former spouse are automatically revoked by a marital dissolution. The same policy reasons should exist for supporting the legislative proposal that revokes provisions in a trust and other non probate transfers that benefit the transferor's former spouse.

I recommend that notwithstanding the potential political opposition from Assembly Member Kuehl, ExComm adopt the proposal which has been extensively studied by the CLRC as its own and seek an author for introduction of a bill in next year's legislative session.

I would be grateful if you would assign this matter to an appropriate committee for further study at our next ExComm meeting with the hope that we could have a legislative proposal implemented by ExComm at the following meeting in time to introduce the legislation in January, 2001.

Thank you for your anticipated cooperation with this request.

Sincerely,



Robert E. Temmerman, Jr.  
RET/gmd ()

enclosures

cc: Keith George, Legislative Chair, (with enclosures)  
Betty Orvell, ExComm Vice Chair, (with enclosures)